



Senate

General Assembly

File No. 449

February Session, 2006

Substitute Senate Bill No. 560

Senate, April 10, 2006

The Committee on Government Administration and Elections reported through SEN. DEFRONZO of the 6th Dist., Chairperson of the Committee on the part of the Senate, that the substitute bill ought to pass.

***AN ACT EXTENDING THE PREVAILING WAGE TO CERTAIN
CONSTRUCTION PROJECTS RECEIVING PUBLIC FINANCIAL
ASSISTANCE.***

Be it enacted by the Senate and House of Representatives in General Assembly convened:

1 Section 1. Section 31-53 of the 2006 supplement to the general
2 statutes is repealed and the following is substituted in lieu thereof
3 (*Effective October 1, 2006*):

4 (a) For purposes of this section:

5 (1) "Awarding authority" means the Commissioner of Economic and
6 Community Development, the board of directors of the Connecticut
7 Development Authority, the board of directors of Connecticut
8 Innovations, Incorporated, and the head of any other quasi-public
9 agency, as defined in section 1-120, as amended, any state agency, any
10 political subdivision of the state or any agent of a political subdivision
11 of the state that awards financial assistance for a publicly-financed

12 project;

13 (2) "Financial assistance" means any grant, loan, loan guarantee or
14 issuance of any tax benefit not of general applicability; and

15 (3) "Publicly-financed project" means a project for new construction
16 for which financial assistance in an amount of four hundred thousand
17 dollars or more has been awarded by an awarding authority.

18 ~~[(a)]~~ (b) Each contract for (1) the construction, remodeling,
19 refinishing, refurbishing, rehabilitation, alteration or repair of any
20 public works project by the state or any of its agents, or by any
21 political subdivision of the state or any of its agents, or (2) the
22 construction of any publicly-financed project shall contain the
23 following provision: "The wages paid on an hourly basis to any person
24 performing the work of any mechanic, laborer or worker on the work
25 herein contracted to be done and the amount of payment or
26 contribution paid or payable on behalf of each such person to any
27 employee welfare fund, as defined in subsection [(h)] (i) of this section,
28 shall be at a rate equal to the rate customary or prevailing for the same
29 work in the same trade or occupation in the town in which such public
30 works or publicly-financed project is [being constructed] located. Any
31 contractor who is not obligated by agreement to make payment or
32 contribution on behalf of such persons to any such employee welfare
33 fund shall pay to each mechanic, laborer or worker as part of such
34 person's wages the amount of payment or contribution for such
35 person's classification on each pay day."

36 ~~[(b)]~~ (c) Any contractor or subcontractor who knowingly or wilfully
37 employs any mechanic, laborer or worker in the construction,
38 remodeling, refinishing, refurbishing, rehabilitation, alteration or
39 repair of any public works project for or on behalf of the state or any of
40 its agents, or any political subdivision of the state or any of its agents,
41 or in the construction of any publicly-financed project at a rate of wage
42 on an hourly basis that is less than the rate customary or prevailing for
43 the same work in the same trade or occupation in the town in which
44 such public works or publicly-financed project is [being constructed,

45 remodeled, refinished, refurbished, rehabilitated, altered or repaired,]
46 located or who fails to pay the amount of payment or contributions
47 paid or payable on behalf of each such person to any employee welfare
48 fund, or in lieu thereof to the person, as provided by subsection (a) of
49 this section, shall be fined not less than two thousand five hundred
50 dollars but not more than five thousand dollars for each offense and (1)
51 for the first violation, shall be disqualified from bidding on contracts
52 with the state or any political subdivision or for any publicly-financed
53 projects until the contractor or subcontractor has made full restitution
54 of the back wages owed to such persons and for an additional six
55 months thereafter, and (2) for subsequent violations, shall be
56 disqualified from bidding on contracts with the state or any political
57 subdivision or for any publicly-financed projects until the contractor or
58 subcontractor has made full restitution of the back wages owed to such
59 persons and for not less than an additional two years thereafter. In
60 addition, if it is found by (A) the contracting officer representing the
61 state or political subdivision of the state for a public works project, or
62 (B) the awarding authority for a publicly-financed project that any
63 mechanic, laborer or worker employed by the contractor or any
64 subcontractor directly on the site for the work covered by the contract
65 has been or is being paid a rate of wages less than the rate of wages
66 required by the contract to be paid as required by this section, the
67 state, [or] contracting political subdivision of the state or awarding
68 authority may [(A)] (i) by written notice to the contractor, terminate
69 such contractor's right to proceed with the work or such part of the
70 work as to which there has been a failure to pay said required wages
71 and to prosecute the work to completion by contract or otherwise, and
72 the contractor and the contractor's sureties shall be liable to the state,
73 [or] the contracting political subdivision or the awarding authority for
74 any excess costs occasioned the state, [or] the contracting political
75 subdivision or the awarding authority thereby, or [(B)] (ii) withhold
76 payment of money to the contractor or subcontractor. The contracting
77 department of the state or the political subdivision of the state or the
78 awarding authority shall, not later than two days after taking such
79 action, notify the Labor Commissioner, in writing, of the name of the

80 contractor or subcontractor, the project involved, the location of the
81 work, the violations involved, the date the contract was terminated,
82 and steps taken to collect the required wages.

83 [(c)] (d) The Labor Commissioner may make complaint to the
84 proper prosecuting authorities for the violation of any provision of
85 subsection [(b)] (c) of this section.

86 [(d)] (e) For the purpose of predetermining the prevailing rate of
87 wage on an hourly basis and the amount of payment or contributions
88 paid or payable on behalf of each person to any employee welfare
89 fund, as defined in subsection [(h)] (i) of this section, in each town
90 where such contract is to be performed, the Labor Commissioner shall
91 (1) hold a hearing at any required time to determine the prevailing rate
92 of wages on an hourly basis and the amount of payment or
93 contributions paid or payable on behalf of each person to any
94 employee welfare fund, as defined in subsection [(h)] (i) of this section,
95 upon any public work within any specified area, and shall establish
96 classifications of skilled, semiskilled and ordinary labor, or (2) adopt
97 and use such appropriate and applicable prevailing wage rate
98 determinations as have been made by the Secretary of Labor of the
99 United States under the provisions of the Davis-Bacon Act, as
100 amended.

101 [(e)] (f) The Labor Commissioner shall determine the prevailing rate
102 of wages on an hourly basis and the amount of payment or
103 contributions paid or payable on behalf of such person to any
104 employee welfare fund, as defined in subsection [(h)] (i) of this section,
105 in each locality where any such public [work] works project or
106 publicly-financed project is to be constructed, and the agent
107 empowered to let such contract shall contact the Labor Commissioner,
108 at least ten but not more than twenty days prior to the date such
109 contracts will be advertised for bid, to ascertain the proper rate of
110 wages and amount of employee welfare fund payments or
111 contributions and shall include such rate of wage on an hourly basis
112 and the amount of payment or contributions paid or payable on behalf

113 of each person to any employee welfare fund, as defined in subsection
114 [(h)] (i) of this section, or in lieu thereof the amount to be paid directly
115 to each person for such payment or contributions as provided in
116 subsection [(a)] (b) of this section for all classifications of labor in the
117 proposal for the contract. The rate of wage on an hourly basis and the
118 amount of payment or contributions to any employee welfare fund, as
119 defined in subsection [(h)] (i) of this section, or cash in lieu thereof, as
120 provided in subsection [(a)] (b) of this section, shall, at all times, be
121 considered as the minimum rate for the classification for which it was
122 established. Prior to the award of any contract subject to the provisions
123 of this section, such agent shall certify in writing to the Labor
124 Commissioner the total dollar amount of work to be done in
125 connection with such public works project or publicly-financed project,
126 regardless of whether such project consists of one or more contracts.
127 Upon the award of any contract subject to the provisions of this
128 section, the contractor to whom such contract is awarded shall certify,
129 under oath, to the Labor Commissioner the pay scale to be used by
130 such contractor and any of the contractor's subcontractors for work to
131 be performed under such contract.

132 [(f)] (g) Each employer subject to the provisions of this section or
133 section 31-54 shall (1) keep, maintain and preserve such records
134 relating to the wages and hours worked by each person performing the
135 work of any mechanic, laborer and worker and a schedule of the
136 occupation or work classification at which each person performing the
137 work of any mechanic, laborer or worker on the project is employed
138 during each work day and week in such manner and form as the Labor
139 Commissioner establishes to assure the proper payments due to such
140 persons or employee welfare funds under this section or section 31-54,
141 regardless of any contractual relationship alleged to exist between the
142 contractor and such person, and (2) submit monthly to the contracting
143 agency a certified payroll that shall consist of a complete copy of such
144 records accompanied by a statement signed by the employer that
145 indicates (A) such records are correct; (B) the rate of wages paid to
146 each person performing the work of any mechanic, laborer or worker
147 and the amount of payment or contributions paid or payable on behalf

148 of each such person to any employee welfare fund, as defined in
149 subsection [(h)] (i) of this section, are not less than the prevailing rate
150 of wages and the amount of payment or contributions paid or payable
151 on behalf of each such person to any employee welfare fund, as
152 determined by the Labor Commissioner pursuant to subsection [(d)]
153 (e) of this section, and not less than those required by the contract to be
154 paid; (C) the employer has complied with the provisions of this section
155 and section 31-54; (D) each such person is covered by a workers'
156 compensation insurance policy for the duration of such person's
157 employment, which shall be demonstrated by submitting to the
158 contracting agency the name of the workers' compensation insurance
159 carrier covering each such person, the effective and expiration dates of
160 each policy and each policy number; (E) the employer does not receive
161 kickbacks, as defined in 41 USC 52, from any employee or employee
162 welfare fund; and (F) pursuant to the provisions of section 53a-157a,
163 the employer is aware that filing a certified payroll which the
164 employer knows to be false is a class D felony for which the employer
165 may be fined up to five thousand dollars, imprisoned for up to five
166 years, or both. This subsection shall not be construed to prohibit a
167 general contractor from relying on the certification of a lower tier
168 subcontractor, provided the general contractor shall not be exempted
169 from the provisions of section 53a-157a if the general contractor
170 knowingly relies upon a subcontractor's false certification.
171 Notwithstanding the provisions of section 1-210, as amended, the
172 certified payroll shall be considered a public record and every person
173 shall have the right to inspect and copy such records in accordance
174 with the provisions of section 1-212. The provisions of subsections (a)
175 and (b) of section 31-59 and sections 31-66 and 31-69 that are not
176 inconsistent with the provisions of this section or section 31-54 apply
177 to this section. Failing to file a certified payroll pursuant to subdivision
178 (2) of this subsection is a class D felony for which the employer may be
179 fined up to five thousand dollars, imprisoned for up to five years, or
180 both.

181 [(g)] (h) The provisions of this section do not apply where the total
182 cost of all work to be performed by all contractors and subcontractors

183 in connection with new construction of any public works project is less
184 than four hundred thousand dollars or where the total cost of all work
185 to be performed by all contractors and subcontractors in connection
186 with any remodeling, refinishing, refurbishing, rehabilitation,
187 alteration or repair of any public works project is less than one
188 hundred thousand dollars.

189 [(h)] (i) As used in this section, section 31-54 and section 31-89a,
190 "employee welfare fund" means any trust fund established by one or
191 more employers and one or more labor organizations or one or more
192 other third parties not affiliated with the employers to provide from
193 moneys in the fund, whether through the purchase of insurance or
194 annuity contracts or otherwise, benefits under an employee welfare
195 plan; provided such term shall not include any such fund where the
196 trustee, or all of the trustees, are subject to supervision by the Banking
197 Commissioner of this state or any other state or the Comptroller of the
198 Currency of the United States or the Board of Governors of the Federal
199 Reserve System, and "benefits under an employee welfare plan" means
200 one or more benefits or services under any plan established or
201 maintained for persons performing the work of any mechanics,
202 laborers or workers or their families or dependents, or for both,
203 including, but not limited to, medical, surgical or hospital care
204 benefits; benefits in the event of sickness, accident, disability or death;
205 benefits in the event of unemployment, or retirement benefits. A
206 summary of the provisions of each employee welfare fund to which an
207 employer subject to the provisions of this section is required to make
208 payments or contributions on behalf of such employer's employees
209 shall be filed in writing with the Labor Department on or before the
210 date construction begins on the public works or publicly-financed
211 project.

This act shall take effect as follows and shall amend the following sections:

Section 1	October 1, 2006	31-53
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LAB *Joint Favorable Subst. C/R*

GAE

GAE *Joint Favorable*

The following fiscal impact statement and bill analysis are prepared for the benefit of members of the General Assembly, solely for the purpose of information, summarization, and explanation, and do not represent the intent of the General Assembly or either House thereof for any purpose:

OFA Fiscal Note

State Impact:

Agency Affected	Fund-Effect	FY 07 \$	FY 08 \$
Department of Economic and Community Development, CT. Development Auth. (quasi-public)	See Below	See Below	See Below
Various	Various - Cost	See Below	See Below

Note: SF=Special Fund (Non-appropriated)

Municipal Impact: None

Explanation

To the extent that the extension of the prevailing wage requirements reduces the number of applicants that apply for financial assistance through the Department of Economic and Community Development, the Connecticut Development Authority, and any other quasi-public agency, there could be a cost savings to the state's financial assistance programs. The exact impact is indeterminate.

If passage of the bill makes construction projects for the Capital City Economic Development Authority (CCEDA) more expensive, additional costs will result.

The Out Years

The fiscal impact identified above would continue into the future subject to inflation.

OLR Bill Analysis**sSB 560*****AN ACT EXTENDING THE PREVAILING WAGE TO CERTAIN CONSTRUCTION PROJECTS RECEIVING PUBLIC FINANCIAL ASSISTANCE.*****SUMMARY:**

This bill extends existing prevailing wage law requirements to any publicly-financed project that receives \$400,000 or more in financial assistance from any state agency, any state quasi-public agency (e.g., the Connecticut Development Authority (CDA)), any political subdivision of the state, including municipalities, or any agent of a political subdivision of the state. The bill defines financial assistance as any grant, loan, loan guarantee or tax benefit not of general applicability.

Under the law, contractors must pay the prevailing wage, as determined by the labor department, to all employees working on state and municipal construction projects that are more than \$400,000 for new construction or \$100,000 for repair or remodeling. The law also requires contractors to keep payroll records and imposes various penalties on violators.

The bill also makes an exception to the prevailing wage requirements for publicly-financed projects. It does not require the assistance recipients to submit payroll records to the agency providing the aid.

The bill also creates a new requirement that when an employee welfare fund is established under the law the contractor must give the Labor Department a summary of the fund's provisions on or before the date construction begins.

EFFECTIVE DATE: October 1, 2006

PUBLICLY-FINANCED PROJECT

The bill defines “publicly-financed project” as a project for new construction with at least \$400,000 in assistance provided by an awarding authority.

AWARDING AUTHORITY

The bill defines “awarding authority” as any state agency, any state quasi-public agency, as defined in statute, any political subdivision of the state, including municipalities, or any agent of a political subdivision of the state that awards assistance for a publicly-financed project. Quasi-public agency means CDA, Connecticut Innovations, Incorporated, Connecticut Health and Educational Facilities Authority, Connecticut Higher Education Supplemental Loan Authority, Connecticut Housing Finance Authority, Connecticut Housing Authority, Connecticut Resources Recovery Authority, Connecticut Hazardous Waste Management Service, Capital City Economic Development Authority and Connecticut Lottery Corporation.

PREVAILING WAGE REQUIREMENTS

The bill requires contractors on all publicly-financed projects to:

1. pay mechanics, laborers, workers, or anyone doing such work the prevailing wage that is customary or prevailing for that occupation as determined by the Labor Department;
2. make the required contribution to an employee welfare fund for covered employees or, if there is none, pay the contribution directly to the employees; and
3. maintain and keep payroll and work schedule records for the project.

The bill also applies existing penalties to violators, including (1) fines, (2) contract termination, (3) withholding of payments, (4) restitution of back pay, and (5) suspension from bidding on future

public projects (i.e., debarment). B law, a contractor that knowingly fails to pay a covered employee the prevailing rate is fined between \$2,500 and \$5,000 for each offense and (1) for the first violation is debarred from bidding on similar contracts until restitution for back wages is made and for an additional six months following or (2) for subsequent violations debarred until restitution is made and for an additional two years afterwards.

The bill does not apply the prevailing wage law requirement to submit certified payroll records to the contracting agency. In economic assistance projects covered by the bill, a private entity, but not the state or any of its agencies or political subdivisions, may be the contracting entity. Under prevailing wage law, a contractor that fails to provide the contracting agency with the certified payroll commits a class D felony.

COMMITTEE ACTION

Labor and Public Employees Committee

Joint Favorable Substitute Change of Reference

Yea 10 Nay 3 (03/14/2006)

Government Administration and Elections Committee

Joint Favorable

Yea 12 Nay 7 (03/22/2006)